APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 670-18C

AARON B. COLEMAN	) Civilian pay; claim for increased pay for detail to higher position; noncontractual basis of federal employees' status; non-jurisdiction over tort claims
vs.	
THE UNITED STATES	

Steven Z. Cohen, attorney of record, for plaintiff.

Mark D. Friedman, with whom was *Assistant Attorney General J. Paul McGrath*, for defendant.

Before FRIEDMAN, *Chief Judge*, DAVIS and BENNETT, *Judges*.

Dated: April 23, 1982

ORDER

Plaintiff was a civilian employee of the Army. His claim is that on several occasions he was detailed to do the work of higher jobs but not paid for that higher-level work. He sues for the higher pay. There is no claim that he was ever formally promoted to or awarded any of those higher positions, but he does allege that he was explicitly or implicitly informed that he would be paid at the higher rates for these periods of service. Defendant moves to dismiss. Without oral argument, we grant that motion.

First, it is settled in this court that plaintiff cannot recover, either under the Back Pay Act, 5 U.S.C. § 5596, or under the "detail" statute, 5 U.S.C. § 3341, the pay of a higher position to which he has been detailed (either properly for the statutory maximum of 120 days, or improperly in excess of 120 days) but not promoted. This was squarely held in *A. Leon Wilson v. United States*, Ct. Cl. No. 324-81C, order of October 23, 1981. An employee held on detail, in violation of 5 U.S.C. § 3341, may possibly have an injunctive or mandatory action in a District Court to end his detail, but he does not have a monetary claim under the Tucker Act for the higher pay.[1]

Second, plaintiff, as a civilian government employee, cannot retreat to the often-invoked, but erroneous, premise that he is merely relying on the claim that he has an implied contractual right to the higher pay. We have often held that employees of the Federal Government do not have contractual rights to their positions or to the higher pay, apart from authorizing specific legislation; rather, their employment rights are normally based on statutes and regulations. *See, e.g., James G. Hilton v. United States*, Ct. Cl. No. 555-80C, order of May 12, 1981. Even if plaintiff was promised the higher pay

[1] There are no other statutes or regulations on which plaintiff relies for his claim of higher pay — or on which he can possibly rely. Congress has simply not provided for higher pay for details short of actual promotions.

of the jobs to which he was detailed, that promise would not create an enforcible contract. For the same reason, plaintiff's claim of quantum meruit is unavailing.

Third, insofar as plaintiff's complaint alleges the torts of fraud and false representation, those torts are plainly not within this court's jurisdiction. 25 U.S.C. § 1491.[2]

Accordingly, defendant's motion is granted and plaintiff's petition is dismissed.

BY THE COURT

Oscar H. Davis
Judge

Dated: April 23, 1982

[2]It would not be in the interest of justice to transfer this case to the District Court. For one thing, plaintiff initially brought suit in the District Court which dismissed it, suggesting this court as the proper forum.